

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

RONALD KUIPER and CONLEY
KUIPER,

Plaintiffs,

vs.

GIVAUDAN FLAVORS CORP.,

Defendant.

No. C 06-4009-MWB

**SUPPLEMENTAL
JURY INSTRUCTIONS**

TABLE OF CONTENTS

SUPPLEMENTAL INSTRUCTIONS.....	1
NO. 1 - INTRODUCTION.	1
NO. 2 - PLAINTIFFS' CLAIMS: FAILURE TO WARN: DEFENDANT'S KNOWLEDGE OF RISKS.....	2
NO. 3 - PUNITIVE DAMAGES: CONDUCT DIRECTED SPECIFICALLY AT THE PLAINTIFF.....	3
NO. 4 - GIVAUDAN'S DEFENSES: UNTIMELINESS.	4

SUPPLEMENTAL INSTRUCTION NO. 1 - INTRODUCTION

In the course of trial, it has become apparent that some supplemental Jury Instructions are appropriate in this case to clarify certain matters for you. In **Instruction No. 1**, I explained that you are to consider all written and oral instructions given to you at the beginning, during, or at the end of the trial, and apply them as a whole to the facts of the case. I remind you now that the supplemental instructions that I am about to give you are neither more nor less important than any other instructions given in the case. Rather, you are to consider these instructions, along with all written and oral instructions given to you at the beginning or during trial, and apply them as a whole to the facts of the case.

**SUPPLEMENTAL INSTRUCTION NO. 2 - PLAINTIFFS' CLAIMS:
FAILURE TO WARN: DEFENDANT'S KNOWLEDGE OF RISKS**

In **Instruction No. 9**, on the Kuipers' "failure to warn" claim, in the explanation to element *three*, I explained when a supplier of a product has a duty to warn the user of the dangerous condition of a product following sale or distribution. As I explained, the first element required to establish such a duty is that the supplier knows or should reasonably know that the product poses a substantial risk of harm to persons or property. I now explain more specifically that, in deciding what the supplier knew or should have known, a supplier should be held to the standard of care of an expert in its field. Therefore, the question is whether the reasonable supplier knew or should have known of the danger, in light of the generally recognized, and prevailing, best scientific knowledge, yet failed to provide adequate warning to users or consumers.

**SUPPLEMENTAL INSTRUCTION NO. 3 - PUNITIVE DAMAGES:
CONDUCT DIRECTED SPECIFICALLY AT THE PLAINTIFF**

In **Instruction No. 14**, on punitive damages, I explained that, if you award the Kuipers punitive damages against Givaudan on a particular claim, then you will be asked to indicate in the Verdict Form whether the wrongful conduct of Givaudan at issue in that claim was “directed specifically at Ronald Kuiper.” I must now give you some further instruction on the meaning of this phrase.

Conduct was “directed specifically at Ronald Kuiper,” if you find by the greater weight of clear, convincing, and satisfactory evidence that, at the time that the conduct occurred, the conduct was either directed or targeted specifically at Ronald Kuiper individually, or the conduct was directed or targeted at a class of potential victims to which plaintiff Ronald Kuiper belonged. Conduct was directed or targeted at an individual or a class of potential victims, if there is clear, convincing, and satisfactory evidence that Givaudan knew or should have known that the individual or the class of potential victims to which the individual belonged would or could be injured by Givaudan’s conduct.

As I explained in **Instruction No. 14**, you need not be concerned with the effect of your determination on this question, because the effect of your determination on this question is for me to decide.

**SUPPLEMENTAL INSTRUCTION NO. 4 - GIVAUDAN'S DEFENSES:
UNTIMELINESS**

In **Instruction No. 16**, on Givaudan's "untimeliness" defense, I explained that, in this case, the Kuipers' claims accrued when they knew, or by the exercise of reasonable diligence should have known, that Ronald Kuiper's claimed injuries may have been caused by exposure to Givaudan's butter flavorings containing diacetyl in the "mixing room" at American Pop Corn Company. I now add the further explanation that Givaudan is not required to show that the Kuipers knew or should have known that Givaudan produced the butter flavoring, only that the Kuipers knew or should have known that the butter flavoring delivered to American Pop Corn caused Ronald Kuiper's injuries.